

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lianne May	Team: Squad #7	CCRB Case #: 202104956	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/25/2021 8:30 AM, Wednesday, 06/23/2021 8:30 AM, Friday, 07/02/2021 9:15 AM, Thursday, 08/19/2021 8:00 AM	Location of Incident: § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED]	Precinct: 34	18 Mo. SOL 11/25/2022	EO SOL 11/25/2022	
Date/Time CV Reported Thu, 08/19/2021 3:09 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 08/19/2021 3:09 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT2 Felix Garcia	04045	906303	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Cesar Gomez	00477	941024	034 PCT
2. DT3 Joe Green	00941	938612	WARRSEC
3. DT3 Munir Alhidami	01315	940953	WARRSEC
4. DT3 Christopher Heredia	01339	938656	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT2 Felix Garcia	Abuse: On May 25, 2021, Detective Felix Garica entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
B.DT2 Felix Garcia	Abuse: On May 25, 2021, Detective Felix Garica searched § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
C.DT2 Felix Garcia	Abuse: On May 25, 2021, Detective Felix Garcia entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
D.DT2 Felix Garcia	Abuse: On May 25, 2021, Detective Felix Garcia searched § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
E.DT2 Felix Garcia	Abuse: On June 23, 2021, Detective Felix Garcia entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
F.DT2 Felix Garcia	Abuse: On June 23, 2021, Detective Felix Garcia searched § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
G.DT2 Felix Garcia	Abuse: On June 23, 2021, Detective Felix Garcia entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
H.DT2 Felix Garcia	Abuse: On June 23, 2021, Detective Felix Garcia searched § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]
I.DT2 Felix Garcia	Abuse: On July 2, 2021, Detective Felix Garcia entered § 87(2)(b) [REDACTED] in Manhattan.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
J.DT2 Felix Garcia	Abuse: On August 19, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.	
K.DT2 Felix Garcia	Abuse: On August 19, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.	
L.DT2 Felix Garcia	Abuse: On August 19, 2021, Detective Felix Garcia threatened to damage § 87(2)(b)'s front door.	
M.DT2 Felix Garcia	Abuse: On August 19, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.	
N.DT2 Felix Garcia	Force: On August 19, 2021, Detective Felix Garcia used physical force against § 87(2)(b) at § 87(2)(b) in Manhattan	
O.DT2 Felix Garcia	Abuse: On August 19, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.	

Case Summary

§ 87(2)(b) filed the following complaint on August 19, 2021, through the CCRB Call Processing System (BR1).

§ 87(2)(b) lives with her daughters, 18-year-old § 87(2)(b) and 22-year-old § 87(2)(b) in § 87(2)(b) at § 87(2)(b) in Manhattan. § 87(2)(b)'s sister, § 87(2)(b) lives in § 87(2)(b) in the same building. § 87(2)(b)'s and § 87(2)(b)'s brother is § 87(2)(b) who, at the time of the incident, had outstanding warrants in Utah and Texas and a New York I-card. Although § 87(2)(b) is still § 87(2)(b)'s legal address, he has not lived there since April 2021.

Detective Felix Garcia of the Manhattan Warrant Squad was the lead detective in the apprehension of § 87(2)(b) based on an open New York I-card and warrants from Texas and Utah from before May 25, 2021, and a New York arrest warrant obtained on June 25, 2021. Sergeant Cesar Gomez and Detective Joe Green, both of the Manhattan Warrant Squad, assisted Det. Garcia. Det. Garcia understood that § 87(2)(b) lived in § 87(2)(b) but also decided to enter and search for him in § 87(2)(b) based on evidence from computer checks, tenant testimony, and the knowledge that § 87(2)(b) lives in § 87(2)(b).

Det. Garcia went to § 87(2)(b) and immediately after to § 87(2)(b) on May 25, 2021, and June 23, 2021, both at 8:30AM, with out-of-state arrest warrants and a New York I-card for § 87(2)(b) for § 87(2)(b). On May 25, 2021, Det. Garcia entered § 87(2)(b) to search for § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) alleged that he searched in places where a person could not hide (**Allegation B: Abuse of Authority, § 87(2)(g)**). On May 25, 2021, Det. Garcia entered and searched § 87(2)(b) (**Allegations C and D: Abuse of Authority, § 87(2)(g)**). On June 23, 2021, Det. Garcia entered § 87(2)(b) and § 87(2)(b) alleged that he searched where a person could not hide (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). On June 23, 2021, Det. Garcia entered and searched § 87(2)(b) (**Allegations G and H: Abuse of Authority, § 87(2)(g)**). On July 2, 2021, at 9:15AM, Det. Garcia entered § 87(2)(b) with the sole purpose of showing the New York arrest warrant to § 87(2)(b) who was in § 87(2)(b) (**Allegation I: Abuse of Authority, § 87(2)(g)**). On August 19, 2021, at 8AM, Det. Garcia entered § 87(2)(b) and § 87(2)(b) alleged that he searched in places where a person could not hide (**Allegation K: Abuse of Authority, § 87(2)(g)**). **Allegation K: Abuse of Authority, § 87(2)(g)**). On August 19, 2021, § 87(2)(b) and § 87(2)(b) alleged Det. Garcia threatened to break down the door of § 87(2)(b) so he could enter (**Allegation L: Abuse of Authority, § 87(2)(g)**). Det. Garcia entered § 87(2)(b) (**Allegation M: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) alleged that Det. Garcia pushed her upon entering (**Allegation N: Force, § 87(2)(g)**). Det. Garcia searched § 87(2)(b) (**Allegation O: Abuse of Authority, § 87(2)(g)**).

The investigation received no body-worn camera (BWC) as detectives from the Warrant Squads have not been issued BWC's (BR2).

Findings and Recommendations

Allegation A-Abuse of Authority: On May 25, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation B- Abuse of Authority: On May 25, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

Allegation E-Abuse of Authority: On June 23, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation F-Abuse of Authority: On June 23, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

Allegation I-Abuse of Authority: On July 2, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation J-Abuse of Authority: On August 19, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation K-Abuse of Authority: On August 19, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

§ 87(2)(b) and § 87(2)(b) live in § 87(2)(b) at § 87(2)(b) in Manhattan. § 87(2)(b) and § 87(2)(b) are all siblings. § 87(2)(b) and § 87(2)(b) live in § 87(2)(b) also at § 87(2)(b) in Manhattan. § 87(2)(b) lives only in § 87(2)(b) and § 87(2)(b) had not had contact with § 87(2)(b) since April 2021. § 87(2)(b) and § 87(2)(b) are § 87(2)(b)'s 18- and 22-year-old daughters, respectively (BR3; BR4).

§ 87(2)(b) said she had photos and videos during her interview (BR5), but after 2 emails (BR6; BR7) did not send them.

Det. Garcia is the lead detective in searching for § 87(2)(b) due to I-cards and warrants and does all computer checks and background research on addresses. He directs other members of service on his team to enter and search locations. Det. Garcia obtains all warrants and completes DD5 entries. Det. Garcia determined § 87(2)(b) is § 87(2)(b)'s legal address through computer checks, past arrests, and domestic incident reports (BR8).

Det. Green and Sgt. Gomez accompanied Det. Garcia on May 25, 2021, June 23, 2021, and August 19, 2021, to the apartments because Det. Garcia instructed them to do so, and they work in teams (BR9; BR10).

The investigative DD5 into the apprehension of § 87(2)(b) § 87(2)(b) On April 29, 2021, the NYPD conferred with US Marshals and began to conduct surveillance of § 87(2)(b) for § 87(2)(b) On May 10, 2021, detectives conducted computer checks and found § 87(2)(b) warrants for Texas and Utah. On May 21, 2021, detectives from the High Intensity Drug Trafficking Area Program, a federally-granted program that provides assistance to agencies in critical drug trafficking areas, provided an FID number for § 87(2)(b) regarding his open two warrants in Utah that are both felony arrest warrants with full extradition within the United States. § 87(2)(b)

Det. Garcia had I-Card § 87(2)(b) (Probable Cause to Arrest for Penal law 125.25) from May 7, 2021, for § 87(2)(b) (BR12).

Det. Garcia obtained a New York arrest warrant for § 87(2)(b) § 87(2)(b)'s legal address, on June 25, 2021 (BR12).

The investigation requested the warrants from Texas and Utah that Det. Garcia had when going to § 87(2)(b) on May 25, 2021, June 23, 2021, July 2, 2021, and August 19, 2021. The NYPD Internal Affairs Bureau (IAB) Liaison provided two warrants noting Montgomery County Sheriff's

office in Texas and § 87(2)(b) and § 87(2)(b). These warrants noted they were for § 87(2)(b).

In the DD5 entry from May 25, 2021, Det. Garcia wrote that they visited § 87(2)(b) in § 87(2)(b) who opened the door and greeted them. Det. Garcia informed her about the situation, and she gave consent to search (BR11).

On May 25, 2021, at 8:30AM, § 87(2)(b) explained that she opened the door for Det. Garcia because Det. Garcia had explained to her that they had a warrant for § 87(2)(b). Det. Garcia then put his foot in the door. Det. Garcia entered and searched in bedrooms, closets, under the beds, and looked around the living/dining room. § 87(2)(b) alleged Det. Garcia looked above the closets where a person cannot fit (BR4).

Det. Garcia hung wanted posters around the apartment building prior to talking to § 87(2)(b). Det. Garcia explained that he had spoken with tenants who confirmed to him that § 87(2)(b) lived in § 87(2)(b) and sometimes had parties in § 87(2)(b). Det. Garcia explained he had the New York I-card and arrest warrants from Texas and Utah. Det. Garcia determined, as above, that § 87(2)(b) was the legal residence. Det. Garcia explained that § 87(2)(b) opened the door completely and motioned for him to enter the apartment. They looked around doing a visual search in the bedrooms and kitchen, but did not move any objects, open anything, or look above the closets or any spaces too small for a person (BR8).

In the DD5 entry from June 23, 2021, Det. Garcia wrote that they visited § 87(2)(b) in § 87(2)(b) who was cooperative and conducted a visual search resulting in negative findings (BR11).

On June 23, 2021, at 8:30AM, § 87(2)(b) explained that Det. Garcia knocked on her door again and told her that they need to search for § 87(2)(b) again. Det. Garcia placed his foot inside her door and then entered. Det. Garcia looked in the exact same places, including the small space above closets (BR4).

On June 23, 2021, Det. Garcia explained that he still had the NY I-card and out-of-state warrants. He did the same searches as he did before and so did not look anywhere where a person could not fit (BR8).

On June 25, 2021, the Supreme Court of NY issued Arrest Warrant § 87(2)(b).

§ 87(2)(b). The warrant lists § 87(2)(b)'s address as § 87(2)(b) § 87(2)(b) New York, NY (BR12).

On June 25, 2021, Det. Garcia obtained the arrest warrant for NY and wanted to show the warrant to § 87(2)(b) (BR12).

There is no DD5 entry on July 2, 2021 (BR11).

Det. Garcia and § 87(2)(b) said that on July 2, 2021, at 9:15AM, Det. Garcia texted her stating, "Good morning. I would like to show you a copy of the warrant, unfortunately I cannot provide you with a copy. If you would like to meet with me before you go to work, let me know." § 87(2)(b) replied she was alone in § 87(2)(b). Det. Garcia arrived alone and entered § 87(2)(b) with the sole purpose of showing her the New York arrest warrant for § 87(2)(b). Det. Garcia never searched § 87(2)(b) (BR8; BR3).

In the DD5 entry from August 19, 2021, Det. Garcia wrote that they visited § 87(2)(b) in § 87(2)(b) and Det. Garcia conducted a search with negative results (BR11).

On August 19, 2021, at 8AM, § 87(2)(b) said that Det. Garcia knocked on her door and then put his foot over the threshold to keep the door open before saying anything to § 87(2)(b). Det. Garcia showed the new warrant to § 87(2)(b). § 87(2)(b) alleged that Det. Garcia searched in a small container with packing cubes and drawers where a person could not hide (BR4).

On August 19, 2021, Det. Garcia said they knocked on § 87(2)(b)'s door and § 87(2)(b) invited them in but could not elaborate on further details of the invitation. searched in bedrooms and rooms but not anywhere a person could not hide. He did not remember any organizational cubes but said the members of service did not look in small spaces (BR8).

According to NY CLS CPL § 570.32, whenever any person within this state shall be charged on the oath of any credible person before any local criminal court of this state with the commission of any crime in any other state ...with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or, whenever complaint shall have been made before any local criminal court in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such other state with the commission of the crime...the local criminal court shall issue a warrant directed to any police officer directing him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other local criminal court...to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to such warrant (BR14).

According to NY CLS CPL § 570.34, the arrest of a person in this state may be lawfully made also by any police officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of another state (BR15).

People v. McDermott, 150 A.D.2d 805 states that “the arrest of the defendant on the out-of-state warrant [i]s authorized by CPL 570.34” (BR16).

Payton v. New York, 445 U.S. 573 states that an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of "exigent circumstances," such as an emergency situation, hot pursuit, or consent is applied (BR17).

According to Operational Order 50(16) regarding Consent to Search Guidelines, when uniformed members of the service assigned to the Detective Bureau and other investigatory commands/units believe that there exists probable cause that sizable property or wanted persons are present at a particular location, they must: approach the lawful custodian of the address to be searched and request permission to conduct a consent search, ask for consent to search in a manner that elicits a clear ‘yes’ or ‘no’ response, follow up by explicitly saying, “I can only conduct a search, if you consent. Do you understand?” If the owner does not consent to a search, you cannot conduct a search unless a search warrant is obtained (BR18).

The Right to Know Act (RTKA) regarding Consent Searches notes that officers must be articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search, securing such consent without threats or promises of any kind being made to such person, affirming that such person understands the information communicated, refraining from conducting such search where such consent has not been obtained (BR19).

Det. Garcia noted in his DD5s and told the CCRB that the out-of-state warrants allowed him to enter § 87(2)(b) on May 25, 2021 and June 23, 2021. However, as per NY CLS CPL §§ 570.32, 570.34 and *People v. McDermott*, having only the out-of-state warrants did not allow for permissible entry into a home, even with probable cause to arrest, without a New York warrant. Additionally, while § 87(2)(b) gave consent to enter, Det. Garcia did not gain consent as set forth in follow Operational Order 50(16) or the RTKA. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

As established above, Det. Garcia entries into § 87(2)(b) on May 25, 2021, June 23, 2021, and August 19, 2022. It is undisputed that he made these entries with the sole purpose of searching for § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Payton v. New York allows for NYPD to enter locations with arrest warrants where the person is known to live. § 87(2)(b) was § 87(2)(b)'s legal address and was noted on the New York arrest warrant that Det. Garcia had on July 2, 2021 and August 19, 2021. § 87(2)(g)

§ 87(2)(b)

Allegation C-Abuse of Authority: On May 25, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation D- Abuse of Authority: On May 25, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

Allegation G-Abuse of Authority: On June 23, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation H- Abuse of Authority: On June 23, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

Allegation L- Abuse of Authority: On August 19, 2021, Detective Felix Garcia threatened to damage § 87(2)(b)'s front door.

Allegation M-Abuse of Authority: On August 19, 2021, Detective Felix Garcia entered § 87(2)(b) in Manhattan.

Allegation N- Force: On August 19, 2021, Detective Felix Garcia used physical force against § 87(2)(b) at § 87(2)(b) in Manhattan

Allegation O- Abuse of Authority: On August 19, 2021, Detective Felix Garcia searched § 87(2)(b) in Manhattan.

On May 25, 2021 at 8:30AM, § 87(2)(b) said that Det. Garcia knocked at the door and said they wanted to enter to search for § 87(2)(b). Det. Garcia gave all the names of the members of service and explained that § 87(2)(b) was wanted in Texas and Utah as well as in New York for an alleged shooting. Det. Garcia showed her documents with § 87(2)(b)'s photo that § 87(2)(b) was wanted and explained to her that she was a known associate of § 87(2)(b) so they wanted to enter. At first, § 87(2)(b) told the detectives that § 87(2)(b) never lived there and was not there at that time.

She requested to talk to a supervisor. She said that Sgt. Gomez was much nicer and calmed her down by giving her his name and writing it down for her. Sgt. Gomez asked her again if they can come in to search for § 87(2)(b) only. She said that was fine with her and opened the door to allow them entry. § 87(2)(b) said that she told them to “come in” and stood to the side to allow all the members of service to come in. They searched her apartment by looking in the bedrooms and closets (BR3).

In the DD5 entry from May 25, 2021, Det. Garcia wrote that they visited § 87(2)(b) and § 87(2)(b) § 87(2)(b) greeted them and told them that she needed time to change. § 87(2)(b) then opened the door and Det. Garcia showed her the Utah warrant. Detectives searched the location with negative results (BR11).

Det. Garcia determined that § 87(2)(b) might be at § 87(2)(b) because there was a domestic violence incident in 2019 with § 87(2)(b) who lives in § 87(2)(b) § 87(2)(b) also confirmed too that § 87(2)(b) was in § 87(2)(b) and Det. Garcia knew that fugitives usually stay with relatives. Det. Garcia explained that arrest warrants are for the person and not a location, so he could enter anywhere he believed § 87(2)(b) to be. Det. Garcia also did computer checks to determine that § 87(2)(b) frequented § 87(2)(b) They put up wanted posters and interviewed tenants in the building who testified that § 87(2)(b) had relatives in § 87(2)(b) and used to throw parties there (BR8).

Det. Garcia explained that on May 25, 2021, he knocked on the door for § 87(2)(b) This was the first time they had contact with § 87(2)(b) and Det. Garcia decided to enter and search because tenants in the building had told him that § 87(2)(b) had parties there and because § 87(2)(b) § 87(2)(b) had told him that § 87(2)(b) lived there, but had no other evidence that § 87(2)(b) would be there at that time. § 87(2)(b) then came out and invited them in by motioning them in with her hand. § 87(2)(b) said she thought that the wanted poster in the building was a joke and requested to see the search warrant. Det. Garcia said that they only have the Utah and Texas arrest warrant and explained the difference between a search warrant and arrest warrant. § 87(2)(b) was on the phone with someone during this conversation. There was no further discussion and the detectives entered and conducted a visual search. No one searched in fridge or microwave (BR8).

On June 23, 2021, at 8:30AM, § 87(2)(b) explained that Det. Garcia knocked on her door and said the arrest warrant for § 87(2)(b) allowed them to enter and search § 87(2)(b) § 87(2)(b) said that the arrest warrant did not allow them entry, so she would not consent to them coming to her apartment and searching for § 87(2)(b) She tried to close the door. Det. Garcia put his foot over the threshold in the doorway in the apartment when she tried to close the door. Det. Garcia then searched under beds, moved closet hangers, and looked in the refrigerator and microwave. Det. Garcia said they would keep coming back to search for § 87(2)(b) (BR3).

The DD5 entry from June 23, 2021, Det. Garcia wrote that they visited § 87(2)(b) and § 87(2)(b) § 87(2)(b) was uncooperative and stressed. She gave permission for detectives to enter, and the search was negative for § 87(2)(b) (BR11).

On June 23, 2021, Det. Garcia said that when he asked § 87(2)(b) to enter and search, she refused to let Det. Garcia enter and pointed at him stating that he was not allowed in her apartment. § 87(2)(b) only allowed other members of his team to enter and was calm with the other officers. Det. Garcia therefore only was halfway in the door and over the threshold to ensure his team’s safety but not escalate the situation. Sgt. Gomez and Det. Green searched, but Det. Garcia did not search at all, and he saw no one look in the microwave or refrigerator (BR8).

On August 19, 2021, after going to § 87(2)(b) at about 8AM, § 87(2)(b) explained that she went with Det. Garcia and his team up to § 87(2)(b). As they were leaving, § 87(2)(b) called § 87(2)(b) to let her know that the detectives were coming up. § 87(2)(b) said she was not there and only § 87(2)(b) was in the apartment. Det. Garcia told § 87(2)(b) that they could take the door down because they had a search warrant for § 87(2)(b) and need to get into the apartment immediately. § 87(2)(b) was yelling through the door for § 87(2)(b) to open the door before the officers broke it down (BR4).

§ 87(2)(b) is § 87(2)(b)'s 22-year-old daughter. § 87(2)(b) said that on August 19, 2021, she had lied to § 87(2)(b) about being in the apartment to avoid having to do a sisterly duty to her. She did not realize that this was about the police. § 87(2)(b) and § 87(2)(b) alleged that Det. Garcia threatened to break down the door if they did not answer. § 87(2)(b) and § 87(2)(b) were not dressed properly for company, but § 87(2)(b) told § 87(2)(b) § 87(2)(b) opened the door a small amount so Det. Garcia would not break it. They both also said that when § 87(2)(b) opened the door a small amount, Det. Garcia immediately put his foot and body over the threshold to keep the door open. § 87(2)(b) said they did not have permission to come in and did not want them inside the apartment. § 87(2)(b) was getting worked up by screaming at the officers to not come into the apartment. § 87(2)(b) was the calm person and told Det. Garcia that they needed some time to get ready and then the detectives could enter. However, Det. Garcia had already pushed in. § 87(2)(b) alleged Det. Garcia shoved her left shoulder and elbow so he could come into her apartment. She alleged the officers searched under clothes in the closets, in the kitchen cabinets, and in the drawers of dressers Det. Garcia then fully entered (BR3; BR20).

§ 87(2)(b) is § 87(2)(b)'s 18-year-old daughter and alleged that the officers searched under her bed and in her dresser drawers on August 19, 2021 (BR5).

In the DD5 entry from August 19, 2021, Det. Garcia wrote that they visited § 87(2)(b) in § 87(2)(b) after § 87(2)(b) told them that § 87(2)(b) would not be home. § 87(2)(b) then opened the door and requested to see the warrant. § 87(2)(b) told § 87(2)(b) to open the door and § 87(2)(b) moved from the door but continued to yell as they searched the apartment. There were negative results (BR11).

On August 19, 2021, Det. Garcia said he did not threaten to take down the door because he would not have had the authority to do that and did not instruct any other member of service to do so. Det. Garcia explained that § 87(2)(b) opened the door and he put his foot into the door so it would not slam shut to make sure § 87(2)(b) was not holding the occupants at gunpoint. Det. Garcia explained again that they were there to search for § 87(2)(b). While § 87(2)(b) was still holding onto the door, § 87(2)(b) fully opened the door for the detectives to enter. Det. Garcia alleged that § 87(2)(b) then told § 87(2)(b) to let the detectives search the apartment. Det. Garcia explained that § 87(2)(b) then let the door go in what appeared to be consent to his entry and search. Det. Garcia never made physical contact with anyone and used no force to enter. They looked in the laundry, around the kitchen, and the refrigerator because those are the places § 87(2)(b) told them to look. They never looked in the microwave or anywhere a person could not fit (BR8).

Payton v. New York, 445 U.S. 573 states that an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. It is accepted, at least as a matter of principle, that a search or seizure carried out on a suspect's premises without a warrant is per se unreasonable, unless the police can show that it falls within one of a carefully defined set of exceptions based on the presence of "exigent circumstances," such as an emergency situation, hot pursuit, or consent is applied (BR17).

According to Operational Order 50(16) regarding Consent to Search Guidelines, when uniformed members of the service assigned to the Detective Bureau and other investigatory commands/units believe that there exists probable cause that sizable property or wanted persons are present at a particular location, they must: approach the lawful custodian of the address to be searched and request permission to conduct a consent search, ask for consent to search in a manner that elicits a clear ‘yes’ or ‘no’ response, follow up by explicitly saying, “I can only conduct a search, if you consent. Do you understand?” If the owner does not consent to a search, you cannot conduct a search unless a search warrant is obtained (BR18).

The Right to Know Act (RTKA) regarding Consent Searches notes that officers must be articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search, securing such consent without threats or promises of any kind being made to such person, affirming that such person understands the information communicated, refraining from conducting such search where such consent has not been obtained (BR19).

Det. Garcia explained that he never had any warrants for § 87(2)(b). Because he lacked any warrants for § 87(2)(b) the Operations Order and RTKA procedures mandated that Det. Garcia get consent from § 87(2)(b) and § 87(2)(b) to enter. Det. Garcia could not provide the CCRB with sufficient reason and lacked any factual basis on which to believe that § 87(2)(b) was in § 87(2)(b) at any of the dates and times he entered and searched and so therefore lacked any basis on which to even ask for consent to enter and search. Det. Garcia’s intention to enter the apartment each time was to search for § 87(2)(b), § 87(2)(b) and § 87(2)(b) testified that they never gave any type of consent to Det. Garcia to enter. Det. Garcia never asked for consent or explained that they could refuse to provide consent. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

It was alleged that Det. Garcia threatened to take down the door to § 87(2)(b) by force and then pushed § 87(2)(b) upon his entry. Det. Garcia denied that he threatened to take down the door and pushed § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR21).
 - This is the first CCRB complaint to which § 87(2)(b) has been a party (BR22).
 - This is the first CCRB complaint to which § 87(2)(b) has been a party (BR23).
 - Detective Felix Garcia has been a member of service for 27 years and has been a subject in eight CCRB complaints and 23 allegations, of which seven charges were substantiated. § 87(2)(g)
- § 87(2)(b)
- 9703186 involved substantiated allegations of force with dragging and pulling, force, shoving, an arrest, and discourtesy and unsubstantiated allegations of gun

- 201602686 involved substantiated allegations of searching premises, refusal to provide name and shield, and threat to damage property against Det. Garcia. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A and no disciplinary action.

- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]
- As of December 16, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint for either apartment for any dates (BR28-BR34).

Investigator: 2022	<u>Lianne May</u>	<u>Investigator Lianne May</u>	<u>July 29,</u>
	Signature	Print Title & Name	Date
Squad Leader:		Manager Vanessa Rosen	July 29, 2022
	<u>Signature</u>	<u>Print Title & Name</u>	<u>Date</u>
Reviewer:			
	<u>Signature</u>	<u>Print Title & Name</u>	